



February 20, 2004

ENGROSSED HOUSE BILL No. 1349

DIGEST OF HB 1349 (Updated February 17, 2004 2:45 pm - DI 106)

Citations Affected: IC 34-6; IC 34-12; IC 34-13; IC 34-30; IC 34-58; noncode.

Synopsis: Litigation by inmates. Provides that before filing a civil rights action or tort claim action against a public employee or government entity, an offender must submit certain documentation to the court. Requires a court to screen an offender's complaints and petitions and dismiss a claim that is frivolous, seeks monetary relief from a defendant who is immune from such relief, or is not a claim upon which relief may be granted. Prohibits an offender who has had three claims dismissed after court screening from filing an action unless a court determines that the offender is in immediate danger of serious bodily injury. Provides that a firearm owner is immune from civil liability for an act or omission relating to a firearm used by another person if the other person directly or indirectly obtained the firearm by means of burglary, robbery, theft, conversion, or receiving stolen property.

Effective: Upon passage; July 1, 2004.

Chowning, Goodin, Koch, Thomas

(SENATE SPONSORS — MEEKS R, CRAYCRAFT, NUGENT, WATERMAN,
HERSHMAN)

January 15, 2004, read first time and referred to Committee on Appointments and Claims.
January 29, 2004, amended, reported — Do Pass.
February 2, 2004, read second time, amended, ordered engrossed.
February 3, 2004, engrossed.
February 4, 2004, read third time, passed. Yeas 77, nays 4.

SENATE ACTION

February 9, 2004, read first time and referred to Committee on Criminal, Civil and Public Policy.
February 19, 2004, amended, reported favorably — Do Pass.

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EH 1349—LS 7291/DI 109+



February 20, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1349

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 34-6-2-46.7 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: **Sec. 46.7. "Firearm", for purposes of**
4 **IC 34-30-20, has the meaning set forth in IC 35-47-1-5.**
5 SECTION 2. IC 34-6-2-89 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 89. **(a)** "Offender", for
7 purposes of IC 34-13-3-7, means a person who is committed to the
8 department of correction or was committed to the department of
9 correction.
10 **(b) "Offender", for purposes of IC 34-58, means a person who**
11 **is committed to the department of correction or incarcerated in a**
12 **jail.**
13 SECTION 3. IC 34-12-3-3, AS ADDED BY P.L.19-2001,
14 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 UPON PASSAGE]: Sec. 3. Except as provided in ~~section 5~~ **section**
16 **5(1) or 5(2)** of this chapter, a person may not bring an action against
17 a firearms or ammunition manufacturer, trade association, or seller for:

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(1) recovery of damages resulting from, or injunctive relief or abatement of a nuisance relating to, the lawful:

- (A) design;
- (B) manufacture;
- (C) marketing; or
- (D) sale;

of a firearm or ammunition for a firearm; or

(2) recovery of damages resulting from the criminal or unlawful misuse of a firearm or ammunition for a firearm by a third party.

SECTION 4. IC 34-12-3-5, AS ADDED BY P.L.19-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. Nothing in this chapter may be construed to prohibit a person from bringing an action against a firearms or ammunition manufacturer, trade association, or seller for recovery of damages for the following:

- (1) Breach of contract or warranty concerning firearms or ammunition purchased by a person.
- (2) Damage or harm to a person or to property owned or leased by a person caused by a defective firearm or ammunition.
- (3) Injunctive relief to enforce a valid statute, rule, or ordinance.

However, a person may not bring an action seeking injunctive relief if that action is barred under section 3 of this chapter.

SECTION 5. IC 34-30-20 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 20. Immunity for Misuse of a Firearm or Ammunition by a Person Other Than The Owner

Sec. 1. A person is immune from civil liability based on an act or omission related to the use of a firearm or ammunition for a firearm by another person if the other person directly or indirectly obtained the firearm or ammunition for a firearm through the commission of the following:

- (1) Burglary (IC 35-43-2-1).
- (2) Robbery (IC 35-42-5-1).
- (3) Theft (IC 35-43-4-2).
- (4) Receiving stolen property (IC 35-43-4-2).
- (5) Criminal conversion (IC 35-43-4-3).

Sec. 2. The provisions of this chapter are severable. If this chapter or any part of this chapter is found to violate the United States Constitution or the Constitution of the State of Indiana, or is held invalid for any other reason, the validity of the remainder of this chapter shall not be affected.

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SECTION 6. IC 34-58 IS ADDED TO THE INDIANA CODE AS
A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
2004]:

ARTICLE 58. SCREENING OF OFFENDER LITIGATION

Chapter 1. Screening Procedure

Sec. 1. Upon receipt of a complaint or petition filed by an offender, the court shall docket the case and take no further action until the court has conducted the review required by section 2 of this chapter.

Sec. 2. (a) A court shall review a complaint or petition filed by an offender and shall determine if the claim may proceed. A claim may not proceed if the court determines that the claim:

- (1) is frivolous;**
- (2) is not a claim upon which relief may be granted; or**
- (3) seeks monetary relief from a defendant who is immune from liability for such relief.**

(b) A claim is frivolous under subsection (a)(1) if the claim:

- (1) is made primarily to harass a person; or**
- (2) lacks an arguable basis either in:**
 - (A) law; or**
 - (B) fact.**

(c) A court shall dismiss a complaint or petition if:

- (1) the offender who filed the complaint or petition received leave to prosecute the action as an indigent person; and**
- (2) the court determines that the offender misrepresented the offender's claim not to have sufficient funds to prosecute the action.**

Sec. 3. If a court determines that a claim may not proceed under section 2 of this chapter, the court shall enter an order:

- (1) explaining why the claim may not proceed; and**
- (2) stating whether there are any remaining claims in the complaint or petition that may proceed.**

Sec. 4. The clerk of the court shall send an order entered under section 3 of this chapter to:

- (1) the offender;**
- (2) each defendant or respondent in the action;**
- (3) the department of correction, if the offender is incarcerated by the department of correction;**
- (4) the sheriff of the county in which the inmate is incarcerated, if the inmate is incarcerated in a county or city jail; and**
- (5) the attorney general.**

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Chapter 2. Abusive Litigation

Sec. 1. If an offender has filed at least three (3) civil actions in which a state court has dismissed the action or a claim under IC 34-58-1-2, the offender may not file a new complaint or petition unless a court determines that the offender is in immediate danger of serious bodily injury (as defined in IC 35-41-1-25).

SECTION 7. IC 34-13-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 7. Commencement of Action Against Public Employees and Government Entities by Offender

Sec. 1. (a) In addition to any other requirements under law, before filing a civil rights action or tort claim action against a public employee or government entity, an offender must submit to the trial court:

- (1) a copy of the complaint the offender wishes to file;**
- (2) a list of all cases previously filed by the offender involving the same, similar, or related cause of actions; and**
- (3) a copy of all relevant documents pertaining to the ultimate disposition of each previous case filed by the offender against any of the same defendants in a state or federal court. The relevant documents include:**

- (A) the complaint;**
- (B) any motions to dismiss or motions for summary judgment filed by the defendants in the actions;**
- (C) the state or federal court order announcing disposition of the case; and**
- (D) any opinions issued in the case by any appellate court.**

(b) An offender must file with the court a brief that includes:

- (1) a legal argument;**
- (2) a citation to authority; and**
- (3) an explanation to the court why the new action is not subject to dismissal as a matter finally decided on its merits by a court and not subject to litigation again between the same parties.**

(c) If the trial court determines that the complaint is frivolous, malicious, or otherwise utterly without merit, or fails to state a claim upon which relief may be granted, the court shall dismiss the complaint.

SECTION 8. [EFFECTIVE JULY 1, 2004] IC 34-58, as added by this act, applies to a cause of action filed after June 30, 2004.

SECTION 9. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Appointments and Claims, to which was referred House Bill 1349, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 34-6-2-89 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 89. **(a)** "Offender", for purposes of IC 34-13-3-7, means a person who is committed to the department of correction or was committed to the department of correction.

(b) "Offender", for purposes of IC 34-58, means a person who is committed to the department of correction or incarcerated in a jail.

SECTION 2. IC 34-58 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

ARTICLE 58. SCREENING OF OFFENDER LITIGATION

Chapter 1. Screening Procedure

Sec. 1. Upon receipt of a complaint or petition filed by an offender, the court shall docket the case and take no further action until the court has conducted the review required by section 2 of this chapter.

Sec. 2. (a) A court shall review a complaint or petition filed by an offender and shall determine if the claim may proceed. A claim may not proceed if the court determines that the claim:

- (1) is frivolous;**
- (2) is not a claim upon which relief may be granted; or**
- (3) seeks monetary relief from a defendant who is immune from liability for such relief.**

(b) A claim is frivolous under subsection (a)(1) if the claim:

- (1) is made primarily to harass a person; or**
- (2) lacks an arguable basis either in:**
 - (A) law; or**
 - (B) fact.**

(c) A court shall dismiss a complaint or petition if:

- (1) the offender who filed the complaint or petition received leave to prosecute the action as an indigent person; and**
- (2) the court determines that the offender misrepresented the offender's claim not to have sufficient funds to prosecute the action.**

Sec. 3. If a court determines that a claim may not proceed under

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section 2 of this chapter, the court shall enter an order:

- (1) explaining why the claim may not proceed; and
- (2) stating whether there are any remaining claims in the complaint or petition that may proceed.

Sec. 4. The clerk of the court shall send an order entered under section 3 of this chapter to:

- (1) the offender;
- (2) each defendant or respondent in the action;
- (3) the department of correction, if the offender is incarcerated by the department of correction;
- (4) the sheriff of the county in which the inmate is incarcerated, if the inmate is incarcerated in a county or city jail; and
- (5) the attorney general.

Chapter 2. Abusive Litigation

Sec. 1. If an offender has filed at least three (3) civil actions in which a state court has dismissed the action or a claim under IC 34-58-1-2, the offender may not file a new complaint or petition unless a court determines that the offender is in immediate danger of serious bodily injury (as defined in IC 35-41-1-25).".

Delete page 2.

Page 3, delete lines 1 through 12.

Page 4, after line 3, begin a new paragraph and insert:

"SECTION 3. [EFFECTIVE JULY 1, 2004] IC 34-58, as added by this act, applies to a cause of action filed after June 30, 2004.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1349 as introduced.)

HARRIS, Chair

Committee Vote: yeas 12, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1349 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 34-6-2-46.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 46.7. "Firearm", for purposes of IC 34-30-20, has the meaning set forth in IC 35-47-1-5.**"

Page 1, between lines 8 and 9, begin a new paragraph and insert:

"SECTION 3. IC 34-30-20 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 20. Immunity of Firearm Owner if Firearm Used in a Crime

Sec. 1. A person is immune from civil liability based on an act or omission related to a firearm owned or controlled by the person, unless the person entrusted the firearm to another person in furtherance of a criminal act."

Page 3, after line 32, begin a new paragraph and insert:

"SECTION 7. [EFFECTIVE UPON PASSAGE] **IC 34-30-20, as added by this act, applies to a cause of action filed after January 1, 1995.**

SECTION 8. An emergency is declared for this act."

Re-number all SECTIONS consecutively.

(Reference is to HB 1349 as printed January 30, 2004.)

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SENATE MOTION

Madam President: I move that Senator Nugent be added as cosponsor of Engrossed House Bill 1349.

MEEKS R

SENATE MOTION

Madam President: I move that Senators Waterman and Hershman be added as cosponsors of Engrossed House Bill 1349.

MEEKS R

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COMMITTEE REPORT

Madam President: The Senate Committee on Criminal, Civil and Public Policy, to which was referred House Bill No. 1349, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between lines 12 and 13, begin a new paragraph and insert:

"SECTION 3. IC 34-12-3-3, AS ADDED BY P.L.19-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. Except as provided in ~~section 5~~ **section 5(1) or 5(2)** of this chapter, a person may not bring an action against a firearms or ammunition manufacturer, trade association, or seller for:

(1) recovery of damages resulting from, or injunctive relief or abatement of a nuisance relating to, the lawful:

- (A) design;
- (B) manufacture;
- (C) marketing; or
- (D) sale;

of a firearm or ammunition for a firearm; or

(2) recovery of damages resulting from the criminal or unlawful misuse of a firearm or ammunition for a firearm by a third party.

SECTION 2. IC 34-12-3-5, AS ADDED BY P.L.19-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. Nothing in this chapter may be construed to prohibit a person from bringing an action against a firearms or ammunition manufacturer, trade association, or seller for recovery of damages for the following:

- (1) Breach of contract or warranty concerning firearms or ammunition purchased by a person.
- (2) Damage or harm to a person or to property owned or leased by a person caused by a defective firearm or ammunition.
- (3) Injunctive relief to enforce a valid statute, rule, or ordinance.

However, a person may not bring an action seeking injunctive relief if that action is barred under section 3 of this chapter."

Page 1, line 16, delete "Immunity of Firearm Owner if Firearm Used in a" and insert "**Immunity for Misuse of a Firearm or Ammunition by a Person Other Than The Owner**".

Page 1, delete line 17.

Page 2, line 2, after "to" insert "**the use of**".

Page 2, line 2, delete "owned or controlled by the person," and insert "**or ammunition for a firearm by another person if the other person directly or indirectly obtained the firearm or ammunition for a**

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firearm through the commission of the following:

- (1) Burglary (IC 35-43-2-1).
- (2) Robbery (IC 35-42-5-1).
- (3) Theft (IC 35-43-4-2).
- (4) Receiving stolen property (IC 35-43-4-2).
- (5) Criminal conversion (IC 35-43-4-3)."

Page 2, delete lines 3 through 4, begin a new paragraph and insert:

"Sec. 2. The provisions of this chapter are severable. If this chapter or any part of this chapter is found to violate the United States Constitution or the Constitution of the State of Indiana, or is held invalid for any other reason, the validity of the remainder of this chapter shall not be affected."

Page 4, delete lines 4 through 6.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1349 as reprinted February 3, 2004.)

LONG, Chairperson

Committee Vote: Yeas 8, Nays 2.

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